

### **REMARKS/ARGUMENTS**

Claims 1 through 34 stand rejected with claim 33 additionally objected to in the outstanding Official Action. Claims 1, 3, 4, 5 and 33 have been amended and therefore claims 1 through 34 remain in this application.

The Patent Office objects to the arrangement of the specification and the Draftsman object to the drawings. It is also appreciated that the Examiner has brought the arrangement of the specification and the existence of Form PTO-948 to the applicant's attention. It is noted that the objection to the arrangement and this form appear to be an indication that the originally filed specification and drawings (transmitted from WIPO) do not meet the formality requirements of the U.S. Patent and Trademark Office. The Patent Office is reminded that the U.S. Patent and Trademark Office must comply with all articles of the Patent Cooperation Treaty (PCT) including Article 27. It has been held that:

"if the rule and interpretation of the PTO conflicts with the PCT, it runs afoul of Article 27 of the PCT which provides in part:

- (1) No national law shall require compliance with requirements relating to the form or contents of the international application different from or additional to those which are provided for in this Treaty and the Regulations."  
Caterpillar Tractor v. Commissioner, 231 USPQ 590, 591 (EDVA 1986).

The Patent Office has referenced this decision in the Official Gazette dated September 9, 1986 (1070 TMOG 5).

As a consequence, the Patent Office (including the Chief Draftsman's Office) may not require specification format changes and/or drawing corrections (including changes in paper size, margins, etc.) as long as the originally submitted documents comply with the PCT requirements. Inasmuch as this specification and these drawings were forwarded for WIPO, by definition, they meet the PCT requirements (they are not forwarded until they meet PCT requirements.). Therefore, the objection to the specification and the Notice of Draftsman's Patent Drawing Review is respectfully traversed and reconsideration thereof is respectfully requested.

Notwithstanding the above, applicant has added headings and subheadings to the specification. Corrected formal drawings will be submitted upon receipt of a Notice of Allowance.

Applicants respectfully request that the Examiner acknowledge applicants' claim for domestic and foreign priority and confirm the same in the Office Action Summary Sheet conventionally attached to any subsequent Official Action.

The Examiner also objects to applicants' drawings under the provisions of Rule 83 alleging that the drawings fail to show the feature of the invention specified in the claims. Specifically the Examiner suggests that the claimed "at least two layers" must be shown. How or why the Examiner believes that the two layers are not shown is not understood.

Applicants' specification on page 9, lines 14 and 15 specify that Figure 6 illustrates "the various layers and heights encountered" and page 12, line 11 through page 13, line 27 is a detailed description of the various layers illustrated in Figure 6. Substantially

silicon oxide layers 57 and 58 are shown and certainly comprise "at least two layers" and the metal layers 67 and 68 also comprise "at least two layers". Therefore there is ample illustration of the claimed layers and it is noted that with respect to claim 1, the metal layers 67 and 68 comprise the first and second spacer layers and metal layers 59 and 60 comprise the first and second electronic element layers. Accordingly, no drawing correction is needed and the existing drawings clearly illustrate the subject matter set out in applicants' claims and any further objection thereto is respectfully traversed.

Claim 33 is objected to with respect to a typographical error regarding dependency from 31. However the Examiner states that "claim 31 should depend on claim 32". This is believed incorrect and perhaps is a typographical error in the Official Action.

Applicant believes the Examiner should have stated that "claim 33 should depend on claim 32" and, if this was the intent of the Official Action, applicant agrees with the Examiner's intent. Claim 33 has been amended to depend from claim 32.

Claims 1, 3 and 33 stand rejected under 35 U.S.C. §112 as indefinite. With respect to claim 1 the Examiner suggests the structure recited in the last two lines of the claim is unclear. Applicants have amended claim 1 to positively recite that the electrical or electronic elements comprise first and second layers and the separate spacer comprises first and second layers and the remainder of the claim points out that the element layer is comprised of substantially the same material as its corresponding spacer layer. This can be seen in applicants' Figure 6 especially with respect to metal spacer layer 67 comprising substantially the same material as electronic element layer 59 and the second

spacer layer 68 comprising substantially the same material as electronic element layer 60.

Accordingly, in view of the above amendment, claim 1 is believed to meet all requirements of 35 U.S.C. §112.

The Examiner also indicates that, regarding claims 1 and 3, it is unclear as to whether the "at least two layers" recited in claims 1 and 3 are the same layers. Applicants have corrected claim 1 to differentiate between the first and second electronic element layers and the first and second spacer layers. This clarification has been carried into claim 3 thereby obviating any further objection thereto.

In Claim 33, the Examiner indicates that there is insufficient antecedent basis for the term "cell." This is due to the typographical error in which claim 33 was previously dependent upon claim 31 as the Examiner has previously noted in the Official Action. The dependency of claim 33 has been corrected to depend from claim 32 which recites "a cell" thereby providing clear antecedent basis for the term as used in claim 33.

In view of the above amendments and corrections, there is believed no further basis for objection to claims 1, 3 and 33 under the provisions of 35 U.S.C. §112 and any further rejection thereof is respectfully traversed.

Claims 1 to 10, 13 to 25 and 27 to 34 stand rejected under 35 U.S.C. §102 as being anticipated by Ju (U.S. patent 5,497,258). The Examiner believes that every structure recited in applicants' independent claims and each rejected claim dependent thereon is shown in the Ju reference.

Apparently, as discussed in the official action, the Examiner believes that Ju discloses "at least two layers [16, 15] essentially of the same material." This statement is incorrect. By reference to the Ju patent at column 4, line 21, Ju identifies layer 16 is a "liquid crystal layer 16" and at column 4, line 28, Ju identifies layer 15 is a "crystal alignment layer 15." Liquid crystal material and a crystal alignment layer are never "the same material" as will be clear to anyone having ordinary skill in the liquid crystal display art and thus the claim 1 limitation "substantially the same material" is missing. As a result Ju cannot anticipate the subject matter of applicants' independent claim 1 or claims dependent thereon.

Additionally applicants' independent claim requires that there be a separate spacer "which rises higher over the backplane than said array." The Examiner has failed to point out where Ju discloses a spacer which rises higher over the backplane than the array. Again this lack of disclosure in the Ju reference prevents its applicability to the presently recited claims either under 35 U.S.C. §102 or §103.

Should the Examiner believe that Ju actually teaches two layers "essentially of the same material" as contended or teaches the separate spacer "which rises higher over the backplane than said array" as required by claim 1 he is respectfully requested to point out precisely in terms of column and line numbers or figure elements where such disclosure is contained in the Ju reference. Absent any such disclosure there is no basis for rejection of claims 1 through 10 and 13 through 25 and 27 through 34 either under 35 U.S.C. §§102 or 103.

Claims 11, 12 and 26 stand rejected under 35 U.S.C. §103 as unpatentable over Ju. The Examiner admits that the Ju reference fails to teach "the specific structural design of the spacer." This admission is a clear indication that Ju cannot provide a *prima facie* case of obviousness of claims 11, 12 and 26 under 35 U.S.C. §103 (because no other reference disclosing this claimed material is cited).

Moreover, the Examiner takes "official notice" with respect to spacers and standoffs and their structural designs. The Examiner's attention is directed to §2144.03 of the Manual of Patent Examining Procedure ("MPEP") which states that "if the applicant traverses such an assertion [that the Examiner is taking "official notice" of facts outside the record] the Examiner should cite a reference in support of his or her position." Applicants respectfully traverse the Examiner's allegation that the recited structural specifics of the spacer and its layers are known and request the Examiner to cite a reference in support of this position.

Regarding claim 26 the Examiner admits that Ju fails to teach the claimed width of the lane. Again to the extent the Examiner is relying on extrinsic evidence to establish that it would be obvious to create a lane at least 1500 microns wide, he is respectfully requested to cite a reference or point out how or where there is support for this contention. Absent any support for the above, it is submitted that the subject matter of claims 11, 12 and 26 especially since they all ultimately depend from independent claim 1 are clearly patentable over the Ju reference under 35 U.S.C. §103 and any further rejection thereunder is respectfully traversed.

Having responded to all objections and rejections set forth in the outstanding Official Action, it is submitted that pending claims 1 through 34 are in condition for allowance and notice to that effect is respectfully solicited. In the event the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, he is respectfully requested to contact applicants' undersigned representative.

Respectfully submitted,

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